

Message Text

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ACTION L-02

INFO OCT-01 IO-10 ISO-00 DLOS-03 EA-06 /022 W

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R 021754Z MAY 75

FM USMISSION GENEVA

TO SECSTATE WASHDC 2584

C O N F I D E N T I A L GENEVA 3160

FOR LEGAL ADVISER FROM OXMAN

FROM US DEL LOS

EO: 11652: GDS

TAGS: PLOS

SUBJ: VISIT OF AUSTRALIAN LEGAL ADVISER LAUTERPACHT

1. AUSTRALIAN LEGAL ADVISER LAUTERPACHT HAS ASKED ME TO REPORT THAT HE WILL BE IN WASHINGTON IN MID-MAY, AND WOULD LIKE TO MEET WITH MR. LEIGH FOR A REVIEW OF LEGAL QUESTIONS. HE WILL ARRANGE PRECISE TIME. SOME LOS QUESTIONS MAY COME UP AT THAT TIME. THE FOLLOWING ARE SOME BACKGROUND COMMENTS FOR MR. LEIGH'S CONSIDERATION.

2. DISPUTE SETTLEMENT:

LAUTERPACHT HAS BEEN VERY ACTIVE IN DISPUTE SETTLEMENT GROUP, OF WHICH AMB. HARRY OF AUSTRALIA IS CO-CHAIRMAN. MAIN DIFFERENCES WITH U.S. ARE AS FOLLOWS:

A. LAUTERPACHT FAVORS A STRONG SYSTEM OF "DISPUTE AVOIDANCE" ENTAILING NOTIFICATION, CONSULTATION, AND CONCILIATION BEFORE REACHING BINDING DISPUTE SETTLEMENT. WHILE THESE ELEMENTS ARE INCLUDED IN TEXT (TO BE SENT SEPTTEL), US HAS SOUGHT TO DOWNPLAY THIS FOR FEAR OPPONENTS OF BINDING SETTLEMENT WOULD HAVE AN EASY TIME ACCEPTING MAJOR PORTION OF ARTICLES, AND REJECTING FINAL POSITION ON BINDING SETTLEMENT. THIS IS PARTICULARLY TRUE IN LIGHT COMPROMISE ON CONCILIATION AT OTHER CONFERENCES. MOREOVER, IN CASES OF RELATIVE URGENCY -- E.G., VESSEL RELEASE OR FISHERIES DISPUTE - LONG CHAIN OF MANDATORY PRELIMINARY PROCEDURES IS PREJUDICIAL.

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B. GOA FAVORS COMPULSORY THIRD PARTY SETTLEMENT WITH NO EX-

CEPTIONS, INCLUDING NO EXCEPTION FOR MILITARY ACTIVITIES. LAUTERPACHT ACTIVELY OPPOSED OUR PRESSURE FOR MILITARY EXCEPTION, BUT HAS TONED DOWN AFTER MEETING WITH SELECTED ALLIES ON ISSUE.

3. CONTINENTAL SHELF:

GOA FAVORS COASTAL STATE JURISDICTION OVER CONTINENTAL SHELF BEYOND 200 MILES TO EDGE OF CONTINENTAL MARGIN, AND IS STRONGLY OPPOSED TO COMPROMISE ON REVENUE-SHARING BEYOND 200 MILES. IT MAY BE USEFUL TO REMIND LAUTERPACHT THAT WE AND OTHER BROAD MARGIN STATES, BELIEVE THAT TO GET CONFERENCE AGREEMENT ON COASTAL STATE CONTROL OVER SHELF BEYOND 200 MILES, WE WILL HAVE TO AGREE TO SOME REVENUE-SHARING. HE MIGHT ALSO BE REMINDED THAT US DOES NOT WISH TO SEE MARGIN EXTEND UNREASONABLY FAR OUT TO SEA SO LONG AS LIMIT ACCOMMODATE MAJOR HYDROCARBON INTERESTS INVOLVED, AND WISHES A PRECISE AND PERMANENT BOUNDARY SUBJECT TO BINDING INTERNATIONAL REVIEW. IN THIS CONNECTION, WHERE LIMIT IS 200 MILES, (I.E., MARGIN IS NOT BEYOND 200 MILES), WE DO NOT WISH CONTINUING CHANGES IN COASTLINE TO ALTER SEABED LIMIT, AS THIS COULD AFFECT INVESTMENTS MADE ON BOTH SIDES OF 200 MILE LINE.

4. POLLUTION:

AUSTRALIA STILL FAVORS MORE COASTAL STATE CONTROL OVER VESSEL SOURCE POLLUTION IN COMMITTEE III THAN WE DO, AND WE CONTINUE TO WONDER IF AUSTRALIA HAS ACCORDED ENOUGH ATTENTION TO THE EFFECT ON ITS EXTENDED LINES OF COMMUNICATION. LAUTERPACHT MIGHT BE REMINDED THAT THE ONLY WAY WE CAN GET EFFECTIVE LDC PARTICIPATION IN ENVIRONMENTAL CONTROL IS THROUGH INTERNATIONAL ACTION, AND THAT CREATION OF COASTAL STATE JURISDICTION COULD IN FACT PROVE TO BE A POLITICAL IMPEDIMENT TO INTERNATIONAL ACTION ON GROUNDS OF INTERFERENCE WITH COASTAL STATE SOVEREIGNTY.

5. STRAITS:

WE WOULD WELCOME MORE POSITIVE GOA SUPPORT FOR UNIMPEDED PASSAGE.

6. I HAVE ASKED THE OFFICE TO PREPARE OTHER RELEVANT BRIEFING MATERIAL AS WELL, INCLUDING THE TOUCHY SUBJECT OF ANTARCTIC RESOURCES. THE LATTER PROBLEM IN JURIDICAL TERMS IS THAT WE DO NOT RECOGNIZE INDIVIDUAL SOVEREIGNTY CLAIMS ON LAND IN ANTARCTICA, AND THEREFORE CAN HARDLY RECOGNIZE MARITIME JURISDICTION OF COASTAL STATES DERIVING FROM THOSE CLAIMS.DALE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW, FOREIGN POLICY POSITION, NEGOTIATIONS, MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 02 MAY 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975GENEVA03160
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D750155-0350
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750587/aaaadbqw.tel
Line Count: 107
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 18 JUN 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <18 JUN 2003 by BoyleJA>; APPROVED <19 JUN 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: VISIT OF AUSTRALIAN LEGAL ADVISER LAUTERPACHT
TAGS: PLOS, (LAUTERPACHT), (LEIGH)
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006